

September 23, 2020

VIA ECF

Hon. Jesse M. Furman
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *In re Citibank August 11, 2020 Wire Transfers*, No. 1:20-cv-06539-JMF (S.D.N.Y.)

Dear Judge Furman:

We submit this letter on behalf of the parties jointly to present a proposed schedule for expert discovery, in connection with this Court's order. ECF No. 83. The parties have conferred regarding a schedule for expert discovery and have agreed on several aspects: (i) the parties will submit concurrent opening experts reports, (ii) each side will present only one expert for opening report, and (iii) reply reports will be permitted only if a party identifies a new expert through its rebuttal report.

The parties have otherwise been unable to agree on a specific schedule, and they put forth their respective positions below.

A. Defendants' Position

In light of this Court's instruction to "preserve[] the existing schedule to the maximum extent possible," Defendants propose a highly expedited schedule for the completion of expert discovery that would result in only a one week extension of the current trial date. Specifically, Defendants propose the following:

Current Fact Discovery Cutoff – October 9, 2020
Deadline for Opening Expert Reports – October 12, 2020
Deadline for Rebuttal Report – October 16, 2020
Deadline for Reply Reports (if any) – October 21, 2020
Deadline for Completion of Expert Depositions – October 24, 2020
Deadline for Pre-trial Submissions – October 26, 2020 (moved from October 16)
Deadline for Reply Memoranda of Law – November 2, 2020 (moved from October 23)
Trial – November 16, 2020 (moved from November 9), subject to Court's availability

Defendants understand that Citibank's proposed schedule would require the parties to make their pre-trial submissions on the current deadline of October 16, notwithstanding that expert discovery would not be completed for another two weeks, on October 30. Defendants believe that the usual protocol, *i.e.*, awaiting the completion of fact and expert discovery prior to pre-trial submissions, is the most efficient and sensible approach here. "Constructive notice" is a topic both sides will address in their pre-trial memoranda, and it will be the focus of expert

discovery. Unlike Citibank's proposal, Defendants' approach would enable the parties to address that topic fully in their pre-trial submissions, without the need to later supplement those submissions, by providing for the completion of expert depositions in advance of those filings. Further, as indicated above, Defendants' proposal would serve that useful purpose while requiring only a modest one week extension to the current trial schedule.

Defendants respectfully request that the Court adopt their proposal.

B. Plaintiff's Position

Citibank proposes the following schedule for expert discovery, in which the parties would exchange affidavits constituting the direct testimony of each expert in lieu of expert reports:

Deadline for Experts' Direct Affidavits – October 16, 2020

Deadline for Experts' Rebuttal Affidavits – October 23, 2020

Deadline for Experts' Reply Affidavits (if necessary) – October 27, 2020

Deadline to Complete Expert Depositions – October 30, 2020

The trial and pre-trial dates in the existing schedule would remain intact.

Citibank's proposal is reasonable and appropriate given the narrow scope of expert discovery and the Court's direction that the proposed expert discovery schedule "preserve[] the existing schedule to the maximum extent possible." ECF No. 83. This proposal preserves the existing schedule, in particular the trial date, and it gives the experts sufficient time to review the materials generated in fact discovery (scheduled to be completed on October 9), including fact witness depositions, before submitting their opinions. Direct affidavits will serve the same purpose as opening expert reports, and rebuttal affidavits will serve the same purpose as rebuttal reports – there is no need to prepare variations of the same documents for multiple purposes. The parties can incorporate anticipated expert direct testimony into their October 16 pre-trial submissions, and any brief supplemental submissions can be made (if necessary) after expert depositions and before trial.

Citibank respectfully requests that the Court adopt its proposal.

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Respectfully submitted,

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